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2006 SEP 15 P 2: 22

BEFORE THE CITY COUNCIL
OF THE CITY OF LAS VEGAS, NEVADA

* * *

CLARK COUNTY, NEVADA

IN THE MATTER OF:

DEPARTMENT OF FINANCE AND
BUSINESS SERVICES on behalf of the
CITY OF LAS VEGAS, NEVADA,

Petitioner,

vs.

THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO.

Respondent.

**RESPONDENT THE POWER
COMPANY, INC. d/b/a CRAZY
HORSE TOO'S PETITION FOR
REHEARING**

PETITION FOR REHEARING

I.
BASIS FOR REHEARING

Respondent hereby moves for a rehearing on the First Amended Complaint on the following grounds:

- A. The City Council has a conflict of interest with respect to this matter on two grounds:
(1) the City Council 's Order will directly lower the price the City has to pay the Respondent for its property in a pending eminent domain action; the City will save tens of millions of dollars; and (2) the Council 's Order will place approximately \$2,000,000.00 in the City's general account for use by the Council .
- B. The Respondent has entered into a purchase agreement for the club pursuant to the Federal Plea Agreement; thus, the City can achieve its desired goal of removing Rick

1 Rizzolo without impacting the Plea Agreement and allowing the settlement
2 agreement with Kirk and Amy Henry to stand.

3 C. The Mayor, no longer has a conflict of interest and can participate in a rehearing
4 where his professional expertise will aid the Members of the Council in any action
5 they may later rule upon.

6 **II.**

7 **THE PROCEDURAL STANDARD FOR REHEARING**

8 Las Vegas Municipal Code, Section 6.88.130 governs rehearings on disciplinary actions and
9 provides in relevant part as follows:

10 The City Council may, upon motion made within ten days after service of a decision
11 and order, order a rehearing before the City Council upon such terms and conditions
12 as it may deem just and proper. Such motion shall not be granted except upon a
13 showing that there is new evidence which is material and necessary and reasonably
14 calculated to change the decision of the City Council and that sufficient reason
15 existed for failure to present such evidence at the hearing of the City Council.

14 **III.**

15 **NEW AND PREVIOUSLY UNKNOWN EVIDENCE**

16 **A. CONFLICT OF INTEREST.**

17 The City Council 's Order Will Directly Lower the Price the City Has to Pay the Petitioner for its
18 Property in a Pending Eminent Domain Action; the City will Save Tens of Millions of Dollars.

19 All members of the City Council are aware that the Respondent sought Judicial Review of
20 the Council 's decision with the 8th Judicial District Court of Nevada. During both a hearing for a
21 Temporary Restraining Order and a hearing for a Temporary Injunction, Deputy City Attorney
22 William Henry advised the Court of his conflict. On or about July 12, 2006, Henry became aware
23 of the fact that the City was proceeding towards a condemnation of the real property that the CRAZY
24 HORSE TOO sits upon. He further stated that, in order to avoid a conflict of interest, on his part,
25 he advised the City Manager to have the City engage outside Council who has no role in these
26 proceedings to advise regarding the condemnation. Henry clearly recognized that the City stood to
27 gain perhaps tens of millions of dollars if it only had to buy vacant commercial property as opposed
28 to transplanting an extremely profitable 24 hour business.

Appraisals and prior court testimony value the operating CRAZY HORSE TOO, including land, in excess of \$53,000,000.00. The non-operating club is worth perhaps \$10,000,000.00; simply land value. These are real numbers and they are staggering. The difference in these values provides direct benefit to the City of Las Vegas. That benefit was derived directly by the Las Vegas City Council.¹

Thus, if the City Attorney's office has a conflict, the City as the decision maker on both matters (licensing and condemnation) also has a conflict of interest. The City had not advised Respondent that it perceived this conflict until after the City Council hearing. Thus, Respondent was unable to present this evidence at the Council hearing.

The Council's Order will place approximately \$2,000,000.00 in the City's General account for use by the Council.

The City Council imposed a fine of \$2,192,000 upon the CRAZY HORSE TOO. Those monies are all set to be paid into the City's coffers. To hold the power to both impose a multi-million dollar fine and latter spend that same money is the very nature of a conflict. Tumey v. Ohio, 273 U.S. 532 (1927) (The United States Supreme Court overturned a misdemeanor conviction by a Mayor of a village who's budget was based on fines assessed by the Mayor in the subject case and similar cases); see also Gilman v. Nevada State board of Veterinary Medical Examiners, 120 Nev. 263 (2004) (holding that administrative punishments do not require actual bias but that "justice must satisfy the appearance of justice.").

The amount of the fine exceeds the amount of any fine previously imposed by the City upon any licensee. Thus, Respondent had no way of knowing that the City would impose a fine so far out of line with precedent.

B. SALE OF THE BUSINESS

On September 7, 2006, a contract to purchase the CRAZY HORSE TOO was executed and substantial earnest money deposit was placed into escrow. This contract was the result of ongoing
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¹ Many City and State agencies across the Country deal with this very issue through the creation of various boards to perform the hearing function to avoid conflicts such as these.

1 negotiations between Respondent with Stuart Cadwell ("Buyer"). The purchase would involve both
2 the club and the Real Property.

3 This sale acts to facilitate three things: (1) to satisfy the Federal Plea Agreement; (2) resolve
4 an on going civil suit by Kirk Henry (the Members will remember the testimony of his wife); and
5 (3) act to remove Mr. Frederick John Rizzolo, and his entities, from running and/or owning the
6 CRAZY HORSE TOO. The third action is exactly what the City Council wants to take place. In
7 other words, the City will get-its-cake-and-eat-it-too if the Club is simply allowed to operate and be
8 sold as agreed upon by the Respondent and the Federal Government.

9 Although Respondent was aware of the negotiations at the time of the Hearing, the
10 Agreement was not signed and the obligation to sell did not arise, until after the Hearing.

11 **C. MAYOR'S PARTICIPATION**

12 All parties are well aware that Mayor Goodman abstained from the final hearing on this
13 matter (although he participated in a prior "closed" City Council hearing on this matter). However,
14 just one day later, at his weekly press conference, Mayor Goodman stated his participation in a
15 rehearing would not create any conflicts.

16 Due to the Mayor's extensive professional experience with both criminal and licensing
17 issues, his presence on the Board is invaluable in this matter. While many of the Council members
18 wished for additional information, the Mayor could have provided educated responses to his fellow
19 members. While many of the Council members hold no experience with Federal Plea agreements
20 and their impact, Mayor Goodman could share his past experiences with the Council .

21 This information was not available to Respondent at the hearing on September 6, 2006, as
22 the Mayor's press conference, was held one day after the hearing. In light of the serious nature of
23 these proceedings, the Mayor's experience should be heard and considered by all Council members.

24 **D. CONCLUSION**

25 Based on the foregoing new facts, Respondent should be granted a rehearing before the City
26 Council pursuant to LVMC 6.88.130, at the earliest possible opportunity. At said hearing the City

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PATTI & SGRO
720 South Seventh Street, Suite 300
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Tel. (702) 385-9595 ♦ Fax (702) 386-2737

1 Council should recognize its actual conflicts of interest and assign a neutral body to hold a hearing
2 within the spirit of the LVMC which satisfies all the Due Process rights afforded to the Respondent.

3
4 DATED this 15 day of September, 2006.

5
6
7 PATTI & SGRO, LTD.

8 

9 ANTHONY P. SGRO
10 HENRY S. STONE, ESQ.
11 720 South Seventh Street, Suite 300
12 Las Vegas, Nevada 89101
13 Attorneys for the Power Company, Inc. d/b/a
14 Crazy Horse Too
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RECEIPT OF COPY

I, the undersigned hereby acknowledge receipt of the foregoing **PETITION FOR REHEARING** filed on behalf of The Power Company, Inc. d/b/a Crazy Horse Too.

Dated: September 15th, 2006.

CITY OF LAS VEGAS

For, William P. Henry, Sr.
William P. Henry, Sr., Deputy City Attorney
Senior Litigation Council
CITY HALL
400 E. Stewart Avenue, 9th Floor
Las Vegas, Nevada 89101

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10 Attorneys for Plaintiff,
11 **THE POWER COMPANY, INC**

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CITY OF LAS VEGAS, NEVADA,

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THE POWER COMPANY, INC. d/b/a
CRAZY HORSE TOO.

Respondent.

AFFIDAVIT OF HENRY S. STONE,
ESQ. IN SUPPORT OF PETITION
FOR REHEARING

STATE OF NEVADA)
COUNTY OF CLARK) ss.

HENRY S. STONE, ESQ., being first duly sworn and upon oath deposes and says
the following:

1. I am the person above named, am competent to testify to the matters stated herein,
do so upon firsthand knowledge, and would so state in a court of law.

2. That during various hearings within the Judicial review process our firm became
aware of that potential conflict, was recognized by Deputy City Attorney Henry. That each of these
Judicial hearings took place after the City Council hearing.

///


1 3. The presence of a conflict of interest with the City Council is necessary and material
2 as it renders the entire proceeding moot as each Member of the Council should have recused from
3 hearing the matter.

4 4. That the day after the City Council hearing, Mayor Goodman announced that he no
5 longer had any conflict of interest and his participation is necessary and material. The presence of
6 the Mayor, with his experience, would surely aid the Council in all its decisions.

7 6. That the CRAZY HORSE TOO is now under contract to be sold. Escrow with a
8 substantial earnest money deposit has been opened. This information is necessary and material
9 because it enables the Council to be sure the Respondent and its owner will not have a role in the
10 CRAZY HORSE TOO upon sale.

11 7. That due to the pending sale, the City will be able to achieve it's goal of removing
12 Mr. Rizzolo from the club and allow the Federal Plea Agreement to stand.

13 DATED: September 14, 2006.

14 
15 Henry S. Stone, Esq.

16
17 SUBSCRIBED and SWORN to before
18 me this 14 day of September, 2006.

19 
20 NOTARY PUBLIC in and for
21 the State of Nevada, Clark County

